LOS/PCN/WP.52
5 February 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

DRAFT PROVISIONAL FINAL REPORT OF THE PLENARY

INTRODUCTION

1. Pursuant to resolution I, the Preparatory Commission shall remain in existence until the conclusion of the first session of the Assembly of the Authority; accordingly, the present report is of necessity provisional. It identifies the issues which remain pending. While reflecting the results achieved so far, this report should in no way be interpreted as precluding the further consideration of the pending issues before the Preparatory Commission.

I. THE PREPARATORY COMMISSION

2. The Third United Nations Conference on the Law of the Sea established the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea and entrusted it with the task of preparing draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions. The functions of the Preparatory Commission were set out in the following paragraphs of resolution I:

> "5. The Commission shall:
>
> (a) prepare the provisional agenda for the first session of the Assembly and of the Council and, as appropriate, make recommendations relating to items thereon;
>
> (b) prepare draft rules of procedure of the Assembly and of the Council;

(c) make recommendations concerning the budget for the first financial period of the Authority;

(d) make recommendations concerning the relationship between the Authority and the United Nations and other international organizations;

(e) make recommendations concerning the Secretariat of the Authority in accordance with the relevant provisions of the Convention;

(f) undertake studies, as necessary, concerning the establishment of the headquarters of the Authority, and make recommendations relating thereto;

(g) prepare draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions, including draft regulations concerning the financial management and the internal administration of the Authority;

(h) exercise the powers and functions assigned to it by resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment;

(i) undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the Authority thereon.

"...

"8. The Commission shall establish a special commission for the Enterprise and entrust to it the functions referred to in paragraph 12 of resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment. The special commission shall take all measures necessary for the early entry into effective operation of the Enterprise.

"9. The Commission shall establish a special commission on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area and entrust to it the functions referred to in paragraph 5 (i).

"10. The Commission shall prepare a report containing recommendations for submission to the meeting of the States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

"11. The Commission shall prepare a final report on all matters within its mandate, except as provided in paragraph 10, for the presentation to the Assembly at its first session. Any action which may be taken on the basis of the report must be in conformity with the provisions of the Convention concerning the powers and functions entrusted to the respective organs of the Authority."

3. In accordance with resolution I, paragraph 1, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea was to be convened once the Convention on the Law of the Sea was signed or acceded to by 50 States. At the conclusion of the Third United Nations Conference on the Law of the Sea, held from 6 to 10 December 1982, the Convention received 119 signatures. Since the required number of signatures had been obtained, the Preparatory Commission began its work in March 1983. Under the rules of procedure, membership of the Preparatory Commission is open to all States which have signed the Convention on the Law of the Sea or have acceded to it. Representatives of signatories of the Final Act of the Third United Nations Conference on the Law of the Sea may participate fully in the deliberations of the Preparatory Commission as observers but shall not be entitled to participate in the taking of decisions (see also para. 2 of resolution I).

4. The first session of the Preparatory Commission was held from 15 March to 8 April 1983, and the resumed first session from 15 August to 9 September 1983. These two sessions were primarily devoted to the consideration of administrative arrangements, namely the structure of the Preparatory Commission, the function of its organs and the election of officers. It was decided that the Preparatory Commission should consist of the Plenary as the principal organ and the following special commissions as its main organs enjoying equal status:

(a) A special commission on the problems that could be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area; this Commission was entrusted with the functions referred to in paragraphs 5 (i) and 9 of resolution I;

(b) A special commission for the Enterprise, for the adoption of all measures necessary for the early entry into effective operation of the Enterprise; this Commission was entrusted with the functions referred to in paragraph 8 of resolution I and paragraph 12 of resolution II;

(c) A special commission for the preparation of rules, regulations and procedures for the exploration and exploitation of the Area (seabed mining code) (resolution I, para. 5 (g));

(d) A special commission for the Tribunal to prepare recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (resolution I, para. 10) (LOS/PCN/27, annex).

5. The functions assigned to the Plenary were:

(a) Preparation of rules, regulations and procedures on the administrative, financial, and budgetary matters pertaining to the various organs of the Authority (resolution I, para. 5 (g));

(b) Implementation of resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules (resolution I, para. 5 (h));

(c) Preparation, consideration and adoption of the final report referred to in paragraph 11 of resolution I incorporating therein the results of deliberations on all matters within its exclusive competence and on all matters within the competence of its special commissions and other subsidiary bodies as contained in the reports submitted to it by them for the presentation of the final report by the Chairman to the first session of the Assembly of the International Seabed Authority;

(d) The general conduct of business; coordination of work of the organs and subsidiary bodies; and upon the recommendation of the General Committee, all questions of organization of work;

(e) Presentation of the report of the Preparatory Commission through its Chairman on the arrangements for the establishment of the International Tribunal for the Law of the Sea to the meeting of States Parties convened for the purpose;

(f) All matters not specifically assigned to the special commissions or other subsidiary bodies.

6. A General Committee was established, having as one of its main functions the task of acting on behalf of the Preparatory Commission as the executive organ for the administration of resolution II (ibid.).

7. At the resumed first session the Preparatory Commission adopted its rules of procedure (LOS/PCN/28).

8. The Preparatory Commission was empowered to establish such subsidiary bodies as necessary for the exercise of its functions and to determine their composition and competence (resolution I, para. 7). During the course of its work the Commission established two such bodies. First, it created in 1986 a Group of Technical Experts to determine whether the applications for registration as pioneer investors were in conformity with resolution II (LOS/PCN/L.41/Rev.1, annex). Secondly, in 1989 it established a Training Panel to make recommendations to the Preparatory Commission on the measures to be taken pursuant to the principles and policies established for the implementation of paragraph 12 (a) (ii) of resolution II regarding the training of personnel (LOS/PCN/SCN.2/L.6/Rev.1, LOS/PCN/SCN.2/L.7 and LOS/PCN/L.92).

Implementation of resolution II

9. Resolution II of the Third United Nations Conference on the Law of the Sea was adopted together with the Convention on the Law of the Sea on 30 April 1982. The intent of the resolution was to protect the substantial investments already made in the development of seabed mining technology, equipment and expertise. The Preparatory Commission was entrusted with the task of implementing resolution II, which embodied the regime for the protection of pioneer investment. This function was assigned to the Plenary of the Preparatory Commission (LOS/PCN/27). The General Committee acted on behalf of the Preparatory Commission as the executive organ for the administration of resolution II.

10. The Plenary began its work on the implementation of resolution II with the consideration of a set of draft rules for the registration of pioneer investors and draft rules on confidentiality, data and information (LOS/PCN/WP.16 and Corr.1). After the first reading of that document it was concluded that there were three principal issues to be addressed by the Plenary on resolution II. The first was the question of overlap of claims, the second related to the question of the Group of Technical Experts, in particular its nature, composition and function, and the third issue concerned the question of the confidentiality of data and information.

11. It was agreed that these issues were difficult to resolve but that it would be relatively easy to deal with both the issue of confidentiality of data and information and that of the Group of Technical Experts if a solution could be found to the question of overlapping claims (LOS/PCN/L.6).

12. Under resolution II applicants for pioneer investor status are required to ensure that areas in respect of which applications are made do not overlap one another. Any State which has signed the Convention and which is a prospective certifying State shall ensure, before making applications to the Commission, that areas in respect of which an application is made do not overlap one another. The States concerned shall resolve the conflicts by negotiations within a reasonable period. If these conflicts were not resolved by 1 March 1983, the prospective certifying States were to arrange for their submission to binding arbitration in accordance with UNCITRAL Arbitration Rules to commence not later than 1 May 1983 and to be completed by 1 December 1984.

13. Therefore, the first and by far the most important issue facing the Preparatory Commission with respect to the implementation of resolution II was the question of overlaps. At the second session of the Preparatory Commission (1984), the Chairman of the Preparatory Commission was requested to use his good offices to help the parties reach an agreement on resolving their conflicts of overlaps. At the summer meeting held at Geneva in 1984, an understanding on the procedure for conflict resolution among the first group of applicants for registration as pioneer investors - France, India, Japan and the Union of Soviet Socialist Republics - was reached. It should be noted that the Soviet Union had submitted its application in July 1983, India in

January 1984, and both France and Japan in August 1984. According to the understanding it was stated, inter alia, that all applicants agreed to meet on 17 December 1984 to exchange lists of coordinates in order to ascertain if there were any overlaps between the areas claimed in the applications submitted to the Preparatory Commission for registration as pioneer investors. If any overlap of claims were to be found between two or more applicants, the conflict should be resolved through negotiations (LOS/PCN/L.8).

14. In accordance with that understanding, the four applicants met at Geneva on 17 December 1984 to exchange lists of coordinates of the areas claimed by them. It was discovered that overlaps existed between the application areas of Japan and the Soviet Union and between those of France and the Soviet Union. Those areas were all situated in the north-eastern part of the Pacific. India, whose application was in the Indian Ocean, had no conflict of overlaps with respect to its application area (LOS/PCN/L.19).

15. The three countries - France, Japan and the Soviet Union - held a series of meetings in order to resolve the conflicts of overlaps in the application areas (LOS/PCN/56). It was possible to resolve on a provisional basis the conflict of overlaps between Japan and the Soviet Union, but that between France and the Soviet Union proved difficult to resolve. It was difficult to find a solution which would meet all the conditions set out in paragraph 3 (a) of resolution II, which provides in part that "every application shall cover a total area which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations", a part of which being reserved for the International Seabed Authority.

16. A period of intense negotiations ensued. Meetings of the four applicants were held at Geneva, Tokyo and finally Arusha in February 1986. At the Arusha meeting the four applicants submitted a set of proposals which constituted what became known as the Arusha understanding. This understanding dealt with two significant issues: (i) the resolution of conflicts due to overlaps and (ii) the allocation of mine sites to the first group of applicants and the designation of reserved areas for the Authority (LOS/PCN/L.34). This understanding introduced, inter alia, two new elements into the pioneer investor regime - the idea of applying paragraph 1 (e) of resolution II at the time when an application was being registered (prior relinquishment of areas) and the notion of self-selection of areas. It will be recalled that according to resolution II it was the Preparatory Commission and not the applicant which had to designate the part of the area to be reserved for the Authority and to allocate to the pioneer investor the pioneer area (resolution II, para. 3 (b)).

17. The Chairman conducted consultations on this understanding with all the interested groups: the first group of applicants, the potential applicants, the Group of 10, representing the Group of 77, and the Group of 11, also known as the Friends of the Convention. Finally, it was possible to put together an understanding which is contained in the statement on the implementation of resolution II of 11 September 1986 (LOS/PCN/L.41/Rev.1, annex).

18. That statement established the procedures and mechanisms essentially designed for the registration of the first group of applicants. It provided for the submission of revised applications by France, Japan and the Union of Soviet Socialist Republics and a timetable for meetings of the General Committee to consider those applications.

19. It also provided for the creation of a Group of Technical Experts. The function of this group was to determine whether an application was in conformity with resolution II and to submit a report on it to the General Committee. The General Committee was to consider the application taking into account the report of the Group of Experts.

20. The statement incorporated the elements already mentioned in respect of the Arusha understanding. Thus, an applicant that had practical problems in resolving its conflicts with respect to overlapping claims with potential applicants was entitled to make voluntary relinquishment of parts of the application areas simultaneously with its registration as a pioneer investor. The relinquished areas were to be reserved to form part of the application areas of potential applicants qualified to apply as pioneer investors under resolution II, paragraph 1 (a) (ii), until the Convention entered into force. Those applicants which did not have practical problems and did not make voluntary advance relinquishments of areas were deemed to have complied with the requirements of resolution II, paragraph 1 (e), upon registration, provided that the total pioneer area allocated to them did not exceed 75,000 sq. km. (ibid., para. 10).

21. With respect to the registration of India, the statement declared that:

> "Notwithstanding the foregoing the registration of India as a pioneer investor shall be made in conformity with resolution II. However, India, like other applicants, if it so wishes, will identify in its application area an area totalling 52,300 sq. km. for incorporation in the area of up to 150,000 sq. km. to be allocated to it as a pioneer area. The provisions on relinquishment in resolution II, paragraph 1 (e), shall apply to the allocated area" (ibid., para. 13 (3)).

21 bis. As far as the exploration of a mine site for the Enterprise is concerned it stated that:

> "Notwithstanding the provisions of paragraph 12 (a) (i) of resolution II, the first group of applicants will assist the Preparatory Commission and the Authority in the exploration of a mine site for the first operation of the Enterprise and in preparing a plan of work in respect of such a mine site. The conditions and extent of this assistance will be discussed and agreed to following registration, applying <u>mutatis mutandis</u> the provisions of paragraph 7 (c) of resolution II" (ibid., para. 14).

22. The interests of potential applicants were taken into account in that the statement provided for similar treatment to be given to potential applicants as that given to the first group of applicants, provided that potential applicants assumed similar obligations to those of the first group of applicants, and had submitted their applications before the entry into force of the Convention (LOS/PCN/L.41/Rev.1, ibid., para. 15).

23. It should be noted that the procedures and mechanisms outlined in the understanding "shall not be construed as setting a precedent for the implementation of the regime for seabed mining under the Convention, nor do they purport to alter or amend that regime in any way" (ibid., para. 18).

24. It was also agreed that any developing State that has signed the Convention or any State enterprise or natural or juridical person that possesses the nationality of such State or is effectively controlled by it or its nationals, or any group of the foregoing, shall have the right to apply as pioneer investor under resolution II, until the Convention enters into force.

25. Likewise, a group of Socialist States of Eastern Europe or a group of their State enterprises was also given the right to apply for one mine site as pioneer investors under resolution II until the Convention enters into force. It will be recalled that in order to qualify as a pioneer investor, the State or entity must have expended before 1 January 1983 an amount equivalent to at least US$ 30 million in pioneer activities, no less than 10 per cent of which had to be expended in the location, survey and evaluation of the application area (resolution II, para. 1 (a)). Under paragraph 1 (a) (iii) of resolution II, a developing country which has signed the Convention must have met this requirement before 1 January 1985.

26. At the summer meeting in 1987, the delegations of Belgium, Canada, Italy, the Netherlands and the Union of Soviet Socialist Republics informed the Preparatory Commission of the meetings between the representatives of their countries held after the fifth session between April and July 1987, with a view to settling practical problems in connection with deep seabed areas which their countries had applied for or might apply for in the future. After four rounds of meetings were held, it was possible to achieve a comprehensive settlement of practical problems (LOS/PCN/90). The delegations of the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany welcomed the successful outcome of these negotiations on practical problems and associated themselves with that settlement (LOS/PCN/92 and LOS/PCN/93). In the light of the settlement, France, Japan and the USSR revised their applications.

27. This development ensured that all the applications for pioneer investment status would be considered by the Group of Technical Experts and the General Committee. The reports of the Group of Experts on the applications of India, France, Japan and the Union of Soviet Socialist Republics are found respectively in documents LOS/PCN/BUR/R.1, LOS/PCN/BUR/R.2, LOS/PCN/BUR/R.3 and LOS/PCN/BUR/R.4.

28. The General Committee, acting as the executive body of the Preparatory Commission, registered as pioneer investors first India on 17 August 1987, and then IFREMER/AFERNOD (France), DORD (Japan) and Yuzhmorgeologiya (Union of Soviet Socialist Republics) on 17 December 1987 (LOS/PCN/94, LOS/PCN/97, LOS/PCN/98 and LOS/PCN/99).

29. Following the registration of the four pioneer investors in 1987, the Chairman of the Preparatory Commission during the course of the sixth session (1988) undertook consultations on the modalities of the implementation of the obligations of the registered pioneer investors and their certifying States. An informal consultative group was formed to deal with these issues which related, inter alia, to the following matters:

(a) Exploration in the area reserved for activities by the Authority (resolution II, para. 12 (a) (i), and LOS/PCN/L.41/Rev.1, annex, para. 14);

(b) Annual fixed fee of US$ 1 million (resolution II, para. 7 (b));

(c) Training of personnel (resolution II, para. 12 (a) (ii));

(d) Registration fee (resolution II, para. 7 (a));

(e) Transfer of technology (resolution II, para. 12 (a) (iii));

(f) Periodic expenditures (resolution II, para. 7 (c));

(g) Funds for the Enterprise (resolution II, para. 12 (b) (i));

(h) Periodic reports (resolution II, paras. 5 (b) and 12 (b) (ii)) (LOS/PCN/L.67/Rev.1).

30. These consultations continued during the summer meeting (1988) of the Preparatory Commission. At the seventh session of the Commission in 1989, these consultations were resumed. It then became apparent that certain matters relating to the discharge of obligations, in particular an agreement on a programme of exploration, required the assistance of the Group of Technical Experts.

31. Accordingly the Group of Technical Experts was convened to prepare a comprehensive exploration plan from the first stages of exploration to the stage at which a decision for exploitation could be taken. The Group was also requested to assist the Preparatory Commission in matters relating to the training of personnel (LOS/PCN/L.77).

32. The reports of the Group of Technical Experts provided the basis for resolving the difficulties relating to the implementation of the obligations of the registered pioneer investors and their certifying States (LOS/PCN/BUR/R.5 and LOS/PCN/BUR/R.6). In the light of these reports of the Group of Technical Experts and after further consultations, the Chairman submitted a revised version, dated 31 August 1989, of the paper he had already

informally distributed on 3 March 1989. At the eighth session of the Preparatory Commission, held at Kingston in 1990, the issue was extensively discussed and substantial progress was made. During the summer meeting the General Committee, on behalf of the Preparatory Commission, unanimously adopted the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex).

33. The four registered pioneer investors agreed to provide training pursuant to paragraph 12 (a) (ii) of resolution II in conformity with the training programme approved by the Preparatory Commission, taking into account the report of the Group of Technical Experts (LOS/PCN/BUR/R.6). The cost of such training was to be borne by the pioneer investors.

34. With respect to exploration, the registered pioneer investors (France, Japan and the Soviet Union) undertook to carry out free of cost the preparatory work and stage I of the plan for exploration contained in the report of the Group of Technical Experts (LOS/PCN/BUR/R.5).

35. As regards stage II of the exploration plan, it was understood that "this will be agreed upon following the complstion of stage I and the review of the results obtained, and taking into account the decision of any pioneer investor to undertake stage II of the plan of exploration in the areas allocated to it. The terms and conditions for such further exploration shall be agreed upon in accordance with resolution II, paragraph 12 (a) (i)" (LOS/PCN/L.87, annex, para. 9).

36. Once these three pioneer investors had satisfactorily complied with the obligations concerning training and exploration, their duty under resolution II, paragraph 7 (b), to pay US$ 1 million per annum was to be waived as from the date of their registration.

37. It was agreed that India would undertake, if so requested, a programme of exploration in accordance with resolution II, paragraph 12 (a) (i), of one mine site for the Enterprise in the area reserved for the Authority in the Indian Ocean. India's obligation to pay the annual fixed fee of US$ 1 million was also waived "as part of the overall understanding" (ibid., para. 11).

38. The four registered pioneer investors undertook to perform the obligations prescribed in the Convention relating to the transfer of technology, and further agreed that training in the use of all available technology was to constitute a substantial component of the training programme (resolution II, para. 12 (a) (iii)).

39. The periodic expenditures for exploration to be incurred in accordance with paragraph 7 (c) of resolution II by the four registered pioneer investors in respect of the development of their respective pioneer areas was to be determined by the Preparatory Commission in consultation with and with the cooperation of each registered pioneer investor within 12 months of the adoption of the understanding. Such expenditures shall be reviewed by the Preparatory Commission from time to time in consultation with and with the cooperation of the registered pioneer investor concerned.

40. Each of the four certifying States agreed to provide, in accordance with article 12 (b) (ii) of resolution II, periodic reports to the Commission on the pioneer activities as defined in paragraph 1 (b) of resolution II, carried out by it or by its entities or natural or juridical persons in their respective pioneer areas. Such reports shall be provided annually.

41. The Commission recognizes that the obligation of each certifying State under paragraph 12 (b) (i) of resolution II is to be implemented upon entry into force for that State of the 1982 United Nations Convention on the Law of the Sea.

42. Under this understanding the Group of Technical Experts, within three months of the deposit of the Convention's sixtieth instrument of ratification or accession, has to review the state of deep seabed mining and make an assessment as to when commercial production may be expected to begin. If the Group concludes that commercial production will not take place for an extended period of time, the Preparatory Commission shall recommend to the Authority that the annual fixed fee should be waived for a relevant period (ibid., para. 12).

42 bis. According to this understanding the Preparatory Commission or the Authority shall enter into arrangements similar to those contained in this understanding with any other registered pioneer investor or applicant (ibid., para. 17).

43. It may be noted that, on the adoption of the understanding, the Chairman stated:

(i) "Should any agreement be made which would affect in any way this understanding, such adjustments as may be necessary shall be made to it;

(ii) "The required date for the submission of a plan of work by each registered pioneer investor under resolution II, paragraph 8 (a), shall be reviewed in the light of the assessment of the Group of Technical Experts in accordance with paragraph 12 of the understanding" (LOS/PCN/L.87, para. 40).

44. At the 51st meeting of the Plenary, held on 31 August 1989, the Preparatory Commission adopted a training programme for the Enterprise (LOS/PCN/SCN.2/L.6/Rev.1). The Plenary at its 55th meeting (1990) subsequently adopted the recommendations of Special Commission 2 on the implementation of the Preparatory Commission Training Programme.

45. On 22 August 1990, at its summer meeting, the Preparatory Commission received an application for pioneer investor status from China on behalf of the China Ocean Mineral Resources Research and Development Association (COMRA) (LOS/PCN/113). At the ninth session (1991) of the Preparatory Commission the General Committee, having considered the report of the Group of Technical

Experts on China's application (LOS/PCN/BUR/R.7), registered COMRA as a pioneer investor.

46. At the ninth session, the Preparatory Commission received an application from the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Union of Soviet Socialist Republics for registration of the Interoceanmetal Joint Organization as a pioneer investor (LOS/PCN/120). At the summer meeting of 1991 the General Committee, having considered the report of the Group of Technical Experts on that application (LOS/PCN/BUR/R.8), registered the Interoceanmetal Joint Organization as a pioneer investor. It may be noted that the Preparatory Commission decided to include Cuba in the list of States having the right to apply as pioneer investors. Cuba was not listed among the States referred to in paragraph 21 of the 1986 statement of understanding as having the right to apply for pioneer investor status (LOS/PCN/L.41, annex, para. 21).

47. At the summer meeting in 1991, the Chairman of the Preparatory Commission continued his informal consultations which he had begun at the ninth session on the implementation of the obligations of the registered pioneer investor, COMRA. The only issue then left to be resolved concerned the matter of similar treatment for future applicants.

48. At the tenth session of the Commission, the consultations on the implementation of the obligations of the registered pioneer investor, COMRA, reached a successful conclusion. The General Committee, on behalf of the Preparatory Commission, unanimously adopted on 12 March 1992 the understanding on the fulfilment of obligations by the registered pioneer investor and its certifying State, the People's Republic of China (LOS/PCN/L.102, annex).

49. Under that understanding the registered pioneer investor, the China Ocean Mineral Resources Research and Development Association (COMRA), on the basis of the available data collected by China in the area reserved for the Authority, shall provide free of cost to the Preparatory Commission:

Computerized database disks for samples, including:

(i) The establishment of comprehensive computerized database disks for sampled stations;

(ii) Data on station number, coordinates, depth, abundance, metal content, device and information on the source of the data, allowing the raw data to be statistically manipulated and presented on various types of maps and graphs.

50. The obligation of the registered pioneer investor, COMRA, under the provisions of paragraph 7 (b) of resolution II shall be waived as of the date of the registration.

51. The pioneer investor was to provide training pursuant to paragraph 12 (a) (ii) of resolution II in conformity with the specific programme for training approved by the Preparatory Commission in accordance with the principles, policies, guidelines and procedures contained in documents LOS/PCN/SCN.2/L.6/Rev.1 and LOS/PCN/SCN.2/L.7, taking into account the report contained in document LOS/PCN/BUR/R.6. It was agreed that the cost of such training was to be borne by the registered pioneer investor and was to be free of cost to the Preparatory Commission. The precise number of trainees, the duration and the fields of training were to be agreed upon between the Preparatory Commission and the registered pioneer investor according to its capabilities. It was further agreed that the first group of trainees was to consist of no less than four individuals.

52. In accordance with paragraph 12 (a) (iii) of resolution II, the registered pioneer investor undertook to perform the obligations prescribed in the United Nations Convention on the Law of the Sea relating to the transfer of technology, and further agreed that training in the use of all available technology was to constitute a substantial component of the training programme.

53. The periodic expenditures for exploration to be incurred in accordance with paragraph 7 (c) of resolution II by the registered pioneer investor in respect of the development of the pioneer area was to be determined by the Preparatory Commission in consultation with and with the cooperation of the registered pioneer investor within 12 months of the adoption of the understanding. Such expenditures were to be reviewed by the Preparatory Commission from time to time in consultation with and with the cooperation of the registered pioneer investor (LOS/PCN/L.102, annex).

53 bis. The understanding also contains a clause on similar treatment of any other registered pioneer investor or future applicant. It stated:

> "[T]aking into account paragraph 19 (e) of the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), paragraph 17 of LOS/PCN/L.87, annex, and this understanding, as well as the relevant characteristics and merits of each application, the Preparatory Commission or the Authority shall enter into arrangements similar to those contained in the above understandings with any other registered pioneer investor or future applicant". (ibid., para. 11)

53 ter. At the tenth session during the summer meeting the General Committee unanimously adopted the understanding on the fulfilment of obligations by the registered pioneer investor, the Interoceanmental Joint Organization (IOM) and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Russian Federation (LOS/PCN/L.108, annex). The provisions of this understanding are similar to those contained in the understanding on the fulfilment of obligations by the registered pioneer investor COMRA and its certifying State the People's Republic of China.

54. At this session also meetings of the General Committee were held to monitor the implementation of the obligations of the registered pioneer investors. On 12 March 1992, the General Committee considered the report of the Group of Technical Experts on the Preparatory Work carried out by the registered pioneer investors IFREMER/AFERNOD, DORD and Yuzhmorgeologiya, in accordance with the understanding on the fulfilment of obligations (LOS/PCN/L.87, annex) and approved the recommendations therein.

55. In accordance with paragraph 5 of the fulfilment of obligations by the registered pioneer investors and their certifying States (ibid.), the certifying States - France (on behalf of IFREMER/AFERNOD), India, Japan (on behalf of DORD) and the Russian Federation (on behalf of Yuzhmorgeologiya) - submitted periodic reports to the Preparatory Commission on the pioneer activities carried out respectively by the registered pioneer investors (LOS/PCN/BUR/R.11, LOS/PCN/BUR/R.12, LOS/PCN/BUR/R.13 and LOS/PCN/BUR/R.14). France, India and Japan made oral presentations of their reports to the General Committee on 26 February 1992. The report submitted by the delegation of the Russian Federation was orally presented and was considered by the General Committee on 10 March 1992.

56. The General Committee, having considered the reports of the certifying States, took note of them.

Future work

57. In more general terms as far as the implementation of resolution II is concerned, the task of the Preparatory Commission is to continue to monitor the implementation of the obligations of the six registered pioneer investors and their certifying States as set out in resolution II, in the statement on the implementation of resolution II of 1986 (LOS/PCN/L.41/Rev.1, annex), the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States of 1990 (LOS/PCN/L.87, annex), the understanding on the fulfilment of obligations by the registered pioneer investor, COMRA, and its certifying State, the People's Republic of China (LOS/PCN/L.102, annex), and the understanding on the fulfilment of obligations by the registered pioneer investor IOM (LOS/PCN/L.108, annex).

II. THE PLENARY ON THE AUTHORITY

58. In the light of the complexity of the mandate assigned to the Plenary and due to the fact that the issues related to the implementation of resolution II were considered as a matter of high priority at the second session of the Preparatory Commission, it was found necessary that the work of the Plenary should be divided into three parts: organization of work of the Commission; implementation of resolution II; and preparation of draft agreements, rules and regulations and procedures. Meetings of the Plenary convened for the consideration of draft agreements, rules, regulations and procedures were named "the Plenary on the Authority".

59. The provisions of resolution I related to the work of the Plenary on the Authority are contained in resolution I, paragraph 5 (b), (c), (d), (e), (f) and (g) and provide the following:

> "5. The Commission shall:
>
> ...
>
> (b) prepare draft rules of procedure of the Assembly and of the Council;
>
> (c) make recommendations concerning the budget for the first financial period of the Authority;
>
> (d) make recommendations concerning the relationship between the Authority and the United Nations and other international organizations;
>
> (e) make recommendations concerning the Secretariat of the Authority in accordance with the relevant provisions of the Convention;
>
> (f) undertake studies, as necessary, concerning the establishment of the headquarters of the Authority, and make recommendations relating thereto;
>
> (g) prepare draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions, including draft regulations concerning the financial management and the internal administration of the Authority;".

60. The areas of responsibility assigned to the Plenary on the Authority within the framework of the Preparatory Commission could be divided into the following three categories:

(a) Preparation of draft rules of procedure for the organs of the Authority;

(b) Preparation of draft agreements concerning the relationship of the Authority with the United Nations, the host country and the Parties to the Convention on the Law of the Sea;

(c) Submission of recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority.

A. Preparation of draft rules of procedure for the organs of the Authority

61. The Plenary on the Authority started its work with the examination of the draft rules of procedure of the Assembly and subsequently proceeded to the consideration of the draft rules of procedure of the Council, the Legal and Technical Commission and the Economic Planning Commission.

62. The Plenary on the Authority held two readings of the draft rules of each of the above-mentioned organs and finalized their texts with the exception of the provisions relating to financial and budgetary matters, decision-making on questions of substance, elections, participation of observers and subsidiary organs. No agreement could be reached with regard to these substantive provisions, which were identified by the Preparatory Commission as the so-called "hard-core" issues (see annex X to the present report).

63. The final text of the draft rules of procedure of the Assembly is contained in annex I to the present report.

64. It should be noted that some of the rules of the Assembly were adopted by the Plenary on the Authority subject to the understandings which were subsequently reflected in the Chairman's reports.

65. Thus, rule 1 on the regular sessions of the Assembly was approved with the understanding that although it was agreed that this rule should follow the text of article 159, paragraph 1, of the Convention on the Law of the Sea, the Authority might need to review in the future the overall picture of meetings of all its organs, taking account of financial considerations (LOS/PCN/L.67/Rev.1, para. 20).

66. Draft rules 22-26 of sections III and IV on representation and credentials as well as rule 50 concerning public meetings and rule 59 entitled "Closing of list of speakers, right of reply" were approved on the understanding that, if required, they could be reconsidered once rule 93 on observers was finalized (ibid., para. 21).

67. With regard to rule 105 concerning financial implications, the Chairman's report notes that the text of this rule might need some modifications and adjustments in the light of the provisions to be adopted on the Finance Committee (LOS/PCN/L.67/Rev.1, para. 23).

68. As far as rule 68 on voting rights is concerned, it should be noted that the delegation of the European Economic Community (EEC) introduced an amendment to this rule concerning the participation in decision-making of an international organization referred to in Annex IX of the United Nations Convention on the Law of the Sea (LOS/PCN/WP.46). According to this proposal, a second paragraph should be added to rule 68, which would read as follows:

"2. An international organization, Party to the Convention in accordance with Annex IX of the Convention, shall only participate in votes on matters relating to which competence has been transferred to it by its member States. In such a case, its member States shall not participate in the vote, and the international organization shall cast the votes which would otherwise - in the absence of transfer of competence - be cast by its member States Parties to the Convention."

69. The Plenary on the Authority did not take any final decision with regard to this proposal. It was neither rejected nor accepted. In the course of the debate on the proposal, the following issues were identified as requiring further attention: quorum for opening of meetings and quorum for decisions to be taken; definition of the expression "members present and voting"; consequences of a transfer of competence. The questions were also raised as to whether the provisions contained in the EEC proposal were to be included only in the rules of procedure of the Assembly or of other organs as well and whether the physical presence of the member States of an international organization would be desirable at the time of decision-making on the matters on which the competence had been transferred to the organizations.

70. It was clear from the debate that, in accordance with the Convention on the Law of the Sea, the vote to be cast by an international organization Party to the Convention should in no case entail an increase in the number of votes (LOS/PCN/L.72, paras. 6 and 7).

71. As mentioned above, the rules of procedure of the organs of the Authority were not completely finalized because of disagreement on several key elements of the rules, which were identified as hard-core issues. The pending draft rules of procedure of the Assembly relating to these issues are the following: financial and budgetary matters - rule 104 (Proposed annual budget); rule 106 (Contributions); decision-making - rule 71 (Decisions on questions of substance); rule 72 (Decisions on amendments to proposals relating to questions of substance); rule 107 (Method of amendment); elections - rule 28 (Elections); rule 83, paragraph 3 (Restricted balloting for one elective place); rule 94 (Nominations); rule 95 (Order of elections); rule 100 (Elections); observers - rule 93, paragraphs 2-6 (Observers); subsidiary organs - rule 87 (Composition).

72. The final text of the draft rules of procedure of the Council is contained in annex II to the present report.

73. As in the case of the Assembly, a number of the draft rules of procedure of the Council were approved on condition that the Chairman would include agreed statements in his report in connection with such rules.

74. With regard to rule 7 concerning notification of observers, it was noted in the Chairman's report that although the rule was approved, the ultimate decision on it was contingent upon the final text of rule 93 (on observers) of the draft rules of procedure of the Assembly, which was left pending (LOS/PCN/L.54, para. 11).

75. Rule 16 on the composition of delegations was adopted with the understanding that the Council had no authority regarding the composition of delegations and that its functions were confined to the examination of their credentials (ibid., para. 12).

76. In connection with paragraph 2 of rule 22 concerning elections, it was pointed out that the principle of rotation among the regional groups for the presidency of the Assembly, the Council, the Legal and Technical Commission and the Economic Planning Commission should receive due consideration in the future (ibid., para. 14).

77. In the draft rules of procedure of the Council, the following rules relating to the hard-core issues were left pending: financial and budgetary matters - rule 31 (Submission of the annual budget); rule 34 (Estimate of expenditures); rule 81 (Finance Committee); decision-making - rule 53 (Decisions requiring two-thirds majority); rule 54 (Decisions requiring three-fourths majority); rule 58 (Procedures for reaching a consensus); rule 70 (Approval of plans of work submitted by applicants other than the Enterprise); rule 71 (Approval of plans of work submitted by the Enterprise); rule 92 (Method of amendment); elections - rule 75 (Equitable geographical distribution and the representation of special interests); observers - rule 73 (Participation by observers); subsidiary organs - rule 83 (Composition).

78. The final text of the draft rules of procedure of the Legal and Technical Commission is contained in annex III to the present report.

79. Some of the rules were approved subject to the following understandings.

80. Although rule 4 concerning notification on the sessions of the Commission was adopted, it was acknowledged that since the rule contained reference to observers, its text could be reviewed again once the issue of observers in general in the rules of procedure of the organs of the Authority was finalized (LOS/PCN/L.62, para. 17).

81. Draft rule 10 dealing with compatible activities and confidentiality was adopted on the understanding that the issue of confidentiality and liability would be addressed at an appropriate time in the future in the general context of all organs of the Authority and the Tribunal for the Law of the Sea (ibid., para. 11).

82. Draft rule 22 concerning estimate of expenditures was adopted on the understanding that the question about the need to spell out in this rule that the reference to financial implications included, where appropriate, financial obligations, would be addressed when the relevant rules of procedure of the Council were considered (ibid., para. 18).

83. With reference to rule 43 concerning recommendations to the Council, it was decided that the text of the rule could be reviewed in the future, if required, in the light of the further discussions on the hard-core issue of decision-making (ibid., para. 12).

84. The following draft rules of procedure of the Legal and Technical Commission were left pending due to their relation to the hard-core issues: decision-making - rule 38 (Reconsideration of the proposals); rule 41 (Decisions on questions of substance); elections - rule 14 (Election of Chairman and the Bureau); observers - rule 56 (Participation by observers).

85. The final text of the draft rules of procedure of the Economic Planning Commission is contained in annex IV to the present report.

86. The draft rules adopted subject to the understandings recorded in the Chairman's report were the following.

87. Draft rule 10 on incompatible activities and confidentiality, the text of which is identical to a similar rule in the draft rules of procedure of the Legal and Technical Commission was also approved on the understanding that at an appropriate time in the future the issue of confidentiality would be studied in the general context of all organs of the Authority and the International Tribunal for the Law of the Sea (LOS/PCN/L.67/Rev.1, para. 7).

88. With regard to rule 16 on the Acting Chairman, it was pointed out in the Chairman's report that there would be a need for the fair distribution of posts among regional groups in all organs of the Authority (ibid., para. 14).

89. Draft rule 22 concerning estimate of expenditures, which follows the text of a similar rule 22 in the draft rules of procedure of the Legal and Technical Commission, was also adopted on the understanding that the concern expressing the need to spell out in such a rule that the reference to financial implications included, where appropriate, the financial obligations of States, would be addressed when the relevant rules of procedure of the Council were considered (ibid., para. 15).

90. The following rules were left pending in the draft rules of procedure of the Economic Planning Commission because of their relation to the hard-core issues: decision-making - rule 38 (Reconsideration of proposals); rule 41 (Decisions on questions of substance); elections - rule 14 (Election of Chairman and the Bureau); observers - rule 55 (Participation by observers). Throughout the work of the Preparatory Commission, the delegation of Japan has taken the position that in order to increase the cost-effectiveness of the Authority the number of languages used by its organs should be reduced to the extent possible. Therefore, although the delegation of Japan did not oppose the adoption of the rules stating that the languages of the organs of the Authority would be the six official languages of the Convention on the Law of the Sea, it reserved its position with regard to these rules, namely, rule 44 (Assembly); rule 85 (Council); rules 57 and 58 (Legal and Technical Commission); rules 56 and 57 (Economic Planning Commission).

91. As far as the hard-core issues are concerned, it turned out that some of them would probably be easier to resolve than the others. The Plenary on the Authority was, for example, rather close to resolving the issue of subsidiary organs.

92. When the Plenary on the Authority started the examination of the issue of subsidiary organs, there were four approaches to it among the delegates.

93. First, the position was taken that the Assembly should have main committees following the normal structure of any large international organization. It was suggested that the organization of the Preparatory Commission could be the model of the future Assembly.

94. Those who supported the second position argued that there was no need for the Assembly to have main committees. The structure of other organizations should not be blindly followed, and the structure of the United Nations should not necessarily be taken as a model.

95. It was observed that the United Nations was a global body dealing with a wide range of global issues: issues of a political nature, security issues, economic issues, social and cultural issues. As a consequence the United Nations must possess Main Committees because one Assembly could not deal with all of those issues. It was noted that the structure of the Preparatory Commission was not a good example either, inasmuch as once the Authority began to function some of the functions of the Preparatory Commission would become functions of organs other than the Assembly.

96. According to a third point of view, it was too early to take a position on whether or not the Assembly would have main committees. The Preparatory Commission should wait until it completed its work and until the structure of the Authority and its functions were clearly defined. It was only at that stage that the Preparatory Commission would be in a position to assess whether the Assembly would need main committees.

97. Under the fourth viewpoint, some delegates argued that there was no need for the Preparatory Commission to make recommendations on the matter. The Commission should leave the decision on the question as to whether there should be main committees to the Assembly of the Authority (LOS/PCN/L.19).

98. The Chairman conducted several rounds of consultations on the above issue. Finally, a compromise was achieved. It was agreed, at the suggestion of the Chairman, that the Preparatory Commission would not make any recommendations to the Authority with regard to the establishment of subsidiary organs of the Assembly. The only exception could be the Finance Committee, if the Preparatory Commission decided to recommend it as a joint subsidiary organ of the Assembly and the Council. Therefore, it would be left to the Assembly to decide in the light of its needs and the particular circumstances what subsidiary organs it might wish to establish.

99. In connection with the above understanding, it was noted in the Chairman's report that although the Preparatory Commission should make necessary recommendations to the Authority to ensure its proper functioning, there was a general concern with respect to the financial implications involved in recommending a heavy structure for the Authority at the initial stage of its operation. It was also pointed out that it would be difficult

for the Preparatory Commission to foresee the types of subsidiary organs that the Assembly might require to perform its functions at the different stages of its activities.

100. It was also pointed out in the Chairman's report that one delegation held the view that by taking this decision the Preparatory Commission was in effect abdicating its reponsibilities. It was stated that it would not be realistic to believe that the Assembly, sitting in plenary meetings, would be able to deal effectively with its agenda.

101. As a result of the adoption of the above understanding, the Plenary could approve rules 86, 88 and 89 in the draft rules of procedure of the Assembly and rules 82 and 84 in the draft rules of procedure of the Council, which relate to subsidiary organs (LOS/PCN/L.82, paras. 35-40). Thus the only pending rules on subsidiary organs are rule 87 (Assembly) and rule 83 (Council) entitled "Composition". These rules were not approved because of their relation to the unresolved question of the composition of the Finance Committee.

102. There were two categories of problems with regard to the question of observers. On the one hand, some delegates took the position according to which States which were signatories to the Convention should be accorded the right of full participation in the work of the Assembly but would not be able to participate in decision-making. On the other hand, some other delegates held the view that no distinction should be made between States signatories and States which did not sign the Convention, and that all States should be able to participate fully in the work of the Assembly.

103. During the consultations undertaken by the Chairman two further suggestions were made. First, it was pointed out that national liberation movements should enjoy a higher status than was accorded them in the proposed draft rules of procedure of the Assembly. Secondly, it was suggested that international organizations which were subjects of international law should also have a higher status than had been accorded to them in that draft.

104. In all cases, whether these were States signatories, all States, national liberation movements or international organizations which were subjects of international law, the main argument rested on the fact that the Convention, particularly Part XI, was intended to be of universal application, and giving a meaningful role to States and other entities already mentioned would encourage this universal participation and thus would reflect the spirit of Part XI, which itself embodied the principle of the common heritage of mankind.

105. It was also argued in support of the first position mentioned above that signatory States had already given an indication of their intent to ratify, or at least had accepted the principles of, the Convention and it was likely that they would ratify and become members. On the other hand, those supporting the second position contended that after the closing of the signing period States were on an equal footing and were all eligible to become Parties, and it did not really matter whether they had signed the Convention or not, because a

State which had not signed the Convention might accede to it even before a State which had signed it. Thus the distinction between signatories or non-signatories became unimportant.

106. At the same time, the Chairman's consultation revealed that there was broad agreement on the need to make efforts in order to promote the universal character of the Convention, and for that reason there was broad agreement that observers should be accorded meaningful participation. There were, however, different approaches to the other elements of that problem.

107. There were those who argued that giving the right of full participation to observer States would not induce non-parties to think favourably of ratifying or acceding to the Convention, and the more States which ratified or acceded, the more viable the Authority was going to be. If it were ratified by only a few States the financial burden alone would discourage States from ratifying. The counterview was that if full rights were accorded to States which were were not Parties, there would be no incentive for them to ratify or accede to the Convention. Those who held this view recognized that a distinction was made in the sense that non-parties would not participate in decision-making, but they argued that this was not a meaningful distinction. The history of the Conference created a tradition whereby decisions would be reached by consensus - at least most of the important decisions would be reached by consensus - and it was probable that the Authority would maintain that policy, so that a distinction based on decision-making had no real meaning.

108. Many argued that they were not concerned with a distinction between signatories, non-signatories, national liberation movements and international organizations. To them that was a minor point. They said the real problem was to make a distinction between the Parties to the Convention and non-parties, and that Parties to the Convention should have a higher status than observers.

109. There were certain cases where observers should be completely excluded. For example, it was pointed out that the Assembly had two functions. The first related to policy-making. Supporters of this view had no objection to the participation of observers when the Authority was engaged in such functions. The second related to the administrative and executive functions of the Authority, and it was their position that non-members should not participate in functions that were of an executive or of an administrative nature. They admitted that sometimes it was difficult to make a distinction between what was a policy-making function and what was an executive or administrative function, but still the distinction should be made. In short, their position was that a clear distinction should be made between the roles played by members and observers in the deliberations of the Assembly (LOS/PCN/L.19).

110. The Plenary on the Authority had to deal with two main issues. First, it had to decide which observers were going to be accorded a higher status, and secondly it had to define the meaning of "meaningful participation", since as

stated above there was broad agreement on according meaningful participation to observers.

111. At the consultations undertaken by the Chairman with a view to resolving the issue of observers, he outlined two types of questions that needed to be addressed. The first concerned the entities which would be granted observer status, and the second related to the extent and nature of the participation of observers in the work of the Assembly and the Council.

112. With regard to the first question, progress was made at the consultations, and as a result the Plenary on the Authority agreed on the list of entities to be granted the status of observers and approved paragraph 1 of rule 93 of the draft rules of procedure of the Assembly containing such a list (LOS/PCN/L.82, paras. 41 and 42).

113. As far as the nature and the extent of observer participation in the work of the Assembly and the Council were concerned, the consultations proved that it would be difficult to narrow the gap between various positions. There was, however, a perception among participants in the consultations that the issue of the status of observers should not be dealt with in a manner which could be construed as a disincentive for States to ratify or accede to the Convention. There was also broad agreement on the need to make efforts to promote the universal character of the Convention on the Law of the Sea (ibid., para. 43).

114. A proposal on the establishment of the Finance Committee was originally included in the draft rules of procedure of the Council in the light of the provisions contained in article 162, paragraphs 2(0)(i) and 2(y) of the Convention. In the final text of the rules of procedure of the Council, draft rule 81 on the Finance Committee remains among the pending issues. In addition to that rule, at the session of the Preparatory Commission, held in March 1988, the Secretariat was asked to prepare a separate working paper on the Finance Committee, covering in detail all aspects of its future activities. The working paper on the Finance Committee, which was considered mainly at the level of consultations conducted by the Chairman with interested delegations, was subsequently revised twice in the light of those consultations. The final text of the working paper on the Finance Committee, reflecting the results of the above-mentioned consultations as approved by the Plenary, is contained in annex V to the present paper.

115. With the exception of two sections relating to elections of the members of the Finance Committee and decision-making, the Plenary on the Authority approved all other sections of that paper.

116. The working paper provides that the Finance Committee should be established as a subsidiary organ of both the Assembly and the Council.

117. With regard to the composition of the Finance Committee, it was understood that although the Preparatory Commission would recommend that the Finance Committee be composed of 15 members, the Authority would of course be

free to decide otherwise or to change that number at any given time in the future (LOS/PCN/L.97, para. 23).

118. With regard to the section on elections of the members of the Committee, in the course of the discussions the following three criteria were identified by various delegations: representation of special interests; equitable geographical representation; and representation of highest contributors. After quite a lengthy debate on these criteria, the Chairman summarized the discussion by stating that there was a general agreement on the first two criteria (ibid., para. 24). It should be noted, however, that several delegations during the discussion expressed the view that in future deliberations a precise meaning for the criterion of "representation of special interests" should be sought (LOS/PCN/L.72, para. 16).

119. Reference to the representation in the Finance Committee of States with the highest contributions to the administrative budget of the Authority proved to be the most controversial provision. A majority of delegates spoke against its retention, emphasizing the lack of any legal basis in the Convention on the Law of the Sea for such a reference. Other delegates took the position that since the States with the highest contributions would bear the main burden of expenses of the Authority, they should have a legitimate right to a substantial representation on the Finance Committee. In their view such a level of representation should remain until the Authority became self-sufficient (ibid., para. 17).

120. On the issue of decision-making, the general view was that the Finance Committee, as an advisory organ, should be as efficient as possible. Therefore no attempt should be made to insert in its rules provisions that could paralyse the work of the Finance Committee in the future. In this regard attention was drawn to the experience of the relevant United Nations organs which might be helpful in seeking proper procedures for the Finance Committee. In summing up the debate, it was indicated that by capitalizing on the experience of these organs the idea of consensus by default could be studied. In practice that would mean that there would be no rule on consensus, but in case of disagreement the Finance Committee would be required to submit a report on the views expressed.

121. During the debate a trend emerged to link decision-making procedures to particular functions. It was pointed out by some delegations that some functions might require decisions by consensus, while for others a three-fourths or a two-thirds majority would be appropriate. It appeared also from the discussion that some delegations held the view that certain functions should result in the submission of recommendations by the Finance Committee, while other functions might envisage the submission of reports and studies (ibid., paras. 22 and 23).

122. Some of the members of the Commission pointed out that it would be difficult to take a final position on decision-making without first deciding on the representation of various groups of States on the Finance Committee. These members held the view that the issue of the relationship between the

Finance Committee on the one hand and the Assembly and the Council on the other and, in this regard, the question of the value of the recommendations of the Finance Committee, would require further consideration.

123. Other members of the Commission were convinced that in approaching the issue of decision-making, the character of the Finance Committee, as an expert body, should be kept in mind. In this connection, they referred to precedents of decision-making procedures in similar bodies of the organizations of the United Nations system and stressed that the Authority should capitalize on such successful experience. Some delegations noted that although the composition of the Finance Committee was an important matter it should not have a decisive effect on decision-making because the Finance Committee was an expert body and its members acted in their personal capacity and not as representatives of member States (LOS/PCN/L.102, paras. 38 and 39).

124. As far as the staff regulations and the financial regulations are concerned, the Plenary on the Authority did not consider these matters. The only document circulated in this regard was the 1983 Secretariat working paper entitled "Suggested Tables of Contents for the Preparation of Draft Rules, Regulations and Procedures by the Preparatory Commission" (LOS/PCN/WP.14) which contained, among other suggestions, an outline of staff rules and regulations.

125. Despite intensive consultations undertaken by the Chairman with the interested delegations on the hard-core issues of financial and budgetary matters, decision-making and elections, no substantial progress could be achieved on these issues.

B. Preparation of draft agreements concerning the relationship of the Authority with the United Nations, the host country and the Parties to the Convention on the Law of the Sea

126. In the discharge of this assignment the Plenary on the Authority has considered and decided to recommend to the Authority the texts of the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority, the draft Protocol on the Privileges and Immunities of the International Seabed Authority and the draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority. Some of the provisions of these agreements were approved with additional clarifications included in the respective reports of the Chairman on the work of the Plenary.

127. The draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority is contained in annex VI to the present report. It was approved with the following clarifications.

128. With regard to paragraph 7 of article 4 concerning law and authority in the Headquarters, it was noted that a suggestion was made to include the words "or in the rules of the Authority". These words were not incorporated into the text of this paragraph because it was understood that the approval of plans of work and contractual arrangements falling under the Mining Code would be regulated by the United Nations Convention on the Law of the Sea (LOS/PCN/L.87, para. 16).

129. Draft article 30 on the assistance which should be provided by the host Government to States Parties and observers in obtaining suitable premises was not included in the text of the Agreement on the understanding that the Government of Jamaica would do its best to assist missions and their members, in accordance with the established international practice, of obtaining suitable premises and accommodations (ibid., para. 19).

130. Article 48 concerning security matters was approved on the understanding that it should be seen as reflecting the need for giving certain flexibility to the Government of Jamaica in taking security measures. It was agreed that the article implied that whenever any measures were to be taken there should be consultations between the Authority and the Government of Jamaica with regard to such measures (ibid., para. 17).

131. In connection with article 55 concerning the relationship between the Agreement and the Protocol, it was agreed to retain it in the text of the Agreement, on the understanding that, for the purposes of the article, any supplementary agreements concluded in accordance with article 56 would be part and parcel of the Headquarters Agreement (LOS/PCN/L.102, para. 14).

132. The draft Protocol on the Privileges and Immunities of the International Seabed Authority is contained in annex VII to the present report.

133. The Plenary on the Authority approved the following clarifications with regard to some of the articles in the text of the Protocol.

134. In article 17 on privileges and immunities of the representatives of member States and of observer States, paragraph 4 was approved on the understanding that under its provisions a State was not prohibited from providing its nationals the privileges and immunities referred to in paragraphs 1 and 2 of the same article.

135. Article 21, subparagraph 1 (f), concerning exemption of experts employed by the Authority from immigration restrictions, alien registration requirements and national service obligations, was approved on the understanding that the exemption did not apply in the case of the country of origin of the expert (ibid., para. 16).

136. The draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority is contained in annex VIII to the present report.

137. The following clarifications with regard to some articles of that Agreement were agreed upon and recorded in the reports of the Chairman.

138. The Plenary decided that there was no need for a separate article on cooperation in the field of public information as had been originally suggested because with the addition of the words "in the field of public information" to the provisions of paragraph 1 of article 3 such cooperation would be covered by the general provisions of that article (ibid., para. 6).

139. In approving article 19 on the possible use by the Authority of the United Nations laissez-passer, the Plenary on the Authority took note of the reservations expressed in this regard by the delegation of Japan which was of the view that the practice of the use of the United Nations laissez-passer by other international organizations should be limited to specialized agencies (LOS/PCN/L.97, para. 7).

C. Submission of recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority

140. Owing to the very nature of the administrative and financial arrangements, their consideration was initiated in the Plenary on the Authority relatively late, since it would not have been possible to identify earlier with sufficient precision the initial requirements of the Authority in this field. The first and only paper submitted on this subject-matter was presented at the session of the Preparatory Commission held in August 1990 in New York. It was entitled "Administrative arrangements, structure and financial implications of the International Seabed Authority" (LOS/PCN/WP.51) and was aimed mainly at facilitating the exchange of views between members of the Preparatory Commission. That document is contained in annex IX to the present report.

141. The outcome of the discussions of the Plenary on the Authority on the above paper was reflected in the Chairman's reports. According to those reports, it appeared from the debate that there was general agreement that the Authority should be both efficient and cost-effective and that its size and structure should meet the needs of the Authority during the initial period of its activities. Therefore, it was suggested during the debate that the structure of the secretariat of the Authority should reflect the concerns for efficiency and cost-effectiveness, taking into account the functions that the Authority will be called upon to perform in the initial stages. It was understood that whatever approach was eventually chosen to achieve those goals, it should preserve the autonomous nature of the Authority. The members of the Plenary on the Authority agreed that details of those general principles should be worked out at an appropriate time in the future and that at that time due consideration would be given to each of the principles.

Annex

PENDING ISSUES BEFORE THE PLENARY ON THE AUTHORITY

1. Provisions in the rules of procedure of the Authority relating to financial and budgetary matters:

Assembly - rule 104 (Proposed annual budget); rule 106 (Contributions).

Council - rule 31 (Submission of the annual budget); rule 34 (Estimate of expenditures); rule 81 (Finance Committee).

2. Provisions in the rules of procedure of the Authority relating to decision-making:

Assembly - rule 71 (Decisions on the questions of substance); rule 72 (Decisions on amendments to proposals relating to questions of substance); rule 107 (Method of amendment).

Council - rule 53 (Decisions requiring two-thirds majority); rule 54 (Decisions requiring three-fourths majority); rule 58 (Procedures for reaching a consensus); rule 70 (Approval of plans of work submitted by applicants other than the Enterprise); rule 71 (Approval of plans of work submitted by the Enterprise); rule 92 (Method of amendment).

Legal and Technical Commission - rule 38 (Reconsideration of the proposals); rule 41 (Decisions on questions of substance).

Economic Planning Commission - rule 38 (Reconsideration of proposals); rule 41 (Decisions on questions of substance).

Finance Committee - section on decision-making.

3. Provisions in the rules of procedure of the organs of the Authority relating to elections:

Assembly - rule 28 (Elections); rule 83, paragraph 3 (Restricted balloting for one elective place); rule 94 (Nominations); rule 95 (Order of elections); rule 100 (Elections).

Council - rule 75 (Equitable geographical distribution and the representation of special interests).

Legal and Technical Commission - rule 14 (Election of Chairman and the Bureau).

Economic Planning Commission - rule 14 (Election of Chairman and the Bureau).

Finance Committee - section on elections.

4. Provisions in the rules of procedure of the organs of the Authority relating to the issue of observers:

Assembly - rule 93, paragraphs 2-6 (Observers).

Council - rule 73 (Participation by observers).

Legal and Technical Commission - rule 56 (Participation by observers).

Economic Planning Commission - rule 55 (Participation by observers).

5. Provisions in the rules of procedure of the organs of the Authority relating to subsidiary organs:

Assembly - rule 87 (Composition).

Council - rule 83 (Composition).

6. Preparation of detailed recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority.

Explanatory note

Documents LOS/PCN/WP.52/Add.1 and Add.2 contain documents relevant to the implementation of resolution II.

Document LOS/PCN/WP.52/Add.3 contains the final draft rules of procedure for the organs of the Authority; the final draft agreements concerning the relationship of the Authority with the United Nations, the host country and the Parties to the Convention on the Law of the Sea; and documents on the Finance Committee and the Administrative arrangements, structure and financial implications of the Authority.